HON'BLE Mrs. JUSTICE T.MEENA KUMARI
AND
HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.25761 OF 2007

DATE: 03-12-2007

Between :

M/s. Md. Azeez, S/o. Khasim Saheb,
Works Contractor, 6-3-65/2, Bank Colony,
Khammam, rep. By its Proprietor Mr. Azeez. … Petitioner

And

1. The Commercial Tax Officer, Khammam.,
   And two others. ... Respondents

HON'BLE Mrs. JUSTICE T.MEENA KUMARI
AND
HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.25761 OF 2007

ORDER : (Per Mrs. Justice T.Meena Kumari)

This writ petition is filed seeking a declaration that the order of the 3rd respondent dated 7.5.2007 in rejecting stay application filed by the petitioner for recovery of the disputed tax of Rs.3,13,145/- for the assessment year 2002-03 under the A.P. General Sales Tax Act, 1957 as arbitrary and illegal.

The petitioner is a registered dealer under the A.P. General Sales Tax Act, 1957 (for short, 'the APGST Act') carrying on business in execution of works contract and is an assessee on the rolls of the 1st respondent – Commercial Tax Officer-II (FAC), Khammam. For the assessment year 2002-03, the petitioner's assessment was completed by the 1st respondent by its proceedings dated 25.3.2005 duly exempting a turnover of Rs.64,34,660/-. However, the 2nd respondent proposed revision of the assessment order passed by the 1st respondent exercising power under Section 20 (2) of the APGST Act and issued a show-cause notice. Though detailed objections have been filed, the 2nd respondent confirmed the revision through his proceedings dated 18.11.2006 withdrawing the exemption on a turn over of Rs.39,14,317/-. Accordingly, the 1st respondent passed the consequential orders which resulted in an additional demand of Rs.3,13,145/-. Challenging the revision order passed by the 2nd respondent, the petitioner filed an appeal before the Sales Tax

Appellate Tribunal. However, the application seeking stay of the recovery of the disputed tax pending Appeal was rejected vide impugned order dated 7.5.2007. Hence, this writ petition.

Having heard the learned Counsel for the petitioner as well as the learned Government Pleader for Commercial Taxes appearing for the respondents and in view of the fact that the appeal is pending before the Sales Tax Appellate Tribunal, we are of the opinion that the interests of justice would be met if stay is granted pending Appeal subject to certain conditions.

Accordingly, the Writ Petition is disposed of granting stay of recovery of the disputed tax pending the Appeal before the Sales Tax Appellate Tribunal subject to the petitioner depositing half of the disputed tax, after giving credit to the amounts already paid, within a period of six weeks from today. However, in the event of failure to deposit half of the disputed tax within the time stipulated above, the impugned order would stand operative.

It is made clear that the amount deposited in compliance with this order shall be without prejudice to the rights of the petitioner in the Appeal.

With the above observation, the Writ Petition is disposed of. No costs.

_____

T.MEENA KUMARI, J.

_____

G. ROHINI, J.

Dt.03-12-2007

gbs